

With the Bush White House overruling its scientists and trying to slash its budget, the **Environmental Protection Agency is widely perceived** to be failing to do its job.

# Vanishing Act

■ By Margaret Kriz

**T**he Environmental Protection Agency is failing to live up to its name these days, its legions of critics agree. At a time when the nation's top environmental regulators face increasingly complex pollution problems, President Bush is pushing for dramatic cuts in EPA's budget, his administration's strained, pro-industry interpretations of environmental laws have repeatedly been laughed out of court, and the White House

is widely perceived to be running roughshod over agency scientists and lawyers.

Environmental experts charge that the agency's vanishing act is undercutting environmental statutes and delaying much-needed new efforts to clean up the nation's air, water, and land

as well as aggressively tackle global warming. "There has been a steady drumbeat of actions that this administration has taken to weaken clean-air protections in this country," says S. William Becker, executive director of the National Association of Clean Air Agencies, which represents state and local pollution control officials. "Their actions have had very serious and substantial adverse impacts on our ability to provide health protection in this country."

Since the Democratic takeover of Capitol Hill in January 2007, EPA Administrator Stephen Johnson has been continually hauled before Congress to answer for the Bush administration's environmental policies. "I view this administration as environmental outlaws," Senate Environment and Public Works Committee Chairwoman Barbara Boxer told *National Journal*. "Every time the EPA deviates from what their scientists recommend, we know one thing for sure: People will get sick, and some will die."

The California Democrat objects, for example, to the administration's recent rejection of the tough new health standard for controlling smog (also known as ozone) that EPA's independent scientific panel had recommended. Instead of taking the panel's advice, Johnson followed the president's orders and adopted an ozone standard that, many experts charge, includes weaker environmental protections. According to Boxer, "EPA's own analysis shows that Administrator Johnson's [ozone] decision ... could result in between approximately 1,000 and 2,000 more premature deaths each year."

Legal experts say that even more than under Bush's two previous administrators, Christine Todd Whitman and Mike Leavitt, Johnson's EPA is regularly pushed around by politically pow-

■ Green Moment



AP IMAGES

**In late 1974, President Nixon, flanked by EPA head William Ruckelshaus and Russell Train of the Council on Environmental Quality, signed clean-air legislation.**



■ **BLOWING SMOKE:**  
Critics charge that EPA is doing  
too little to control pollution.



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—Sen. Barbara Boxer

erful advisers at the White House and in other departments. “There’s a sense that the agency has not stood up for itself and has been run over by other interests in the executive branch—and that it’s happened under Steve Johnson’s stewardship,” said Richard Lazarus, an environmental law professor at Georgetown.

“He has not been a strong administrator, a strong voice in the administration,” Lazarus continued. “In case after case, to the extent that the EPA career and science people have sought something, the White House has repeatedly trumped his judgment more than has happened in the past.”

Critics acknowledge that ever since President Nixon created the supposedly independent agency in 1970, every EPA administrator has faced conflicts between what the agency’s experts recommend and what the White House demands. “But it seems to me that that tension is now at an acute level,” said Jonathan Cannon, director of the University of Virginia Law School’s environmental and land-use program. “It’s causing extreme friction within the agency and institutional damage. It’s demoralizing the legal staff, and it’s further separating staff from the political leadership at the agency.” Cannon served at EPA during the Reagan, George H.W. Bush, and Clinton administrations.

EPA’s current lawyers and scientists say that agency morale is almost as bad as it was in the early 1980s after President Reagan appointed pro-industry Anne Gorsuch Burford to head it. EPA’s reputation fell so low under Burford that Reagan felt obligated to sack her and bring back William Ruckelshaus, the agency’s beloved first administrator.

Burford’s controversial tenure led EPA’s professional staff to organize a branch of the National Treasury Employees Union in hopes of “being able to do our work with the minimum of political interference,” said union Vice President J. William Hirzy, an EPA scientist. He charges that the Bush administration’s tactics constitute “POLITICAL INTERFERENCE—in all capital letters.” As a consequence, Hirzy’s group and three other employee unions have withdrawn from EPA’s labor-management partnership council in protest.

White House meddling has pulled EPA “off to the extreme end of the right-wing perspective on the environment, reflecting not even a consensus within the Republican Party but the views of some who are particularly hostile to the agency’s historic mission,” says Daniel Esty, an environmental law professor at Yale who served as the EPA administrator’s deputy chief of staff during the George H.W. Bush administration and now advises Democratic presidential candidate Barack Obama on environmental policy.

### Into the Limelight

Although the White House seems to be calling the tune on the administration’s environmental policies, most observers say that Johnson rarely objects. Johnson, 57, was elevated to admin-

istrator in May 2005 after decades of toiling in relative obscurity at the agency. Bush brags about Johnson’s credentials as a 27-year EPA scientist. For his part, Johnson enjoys telling his staff and visitors about his travels on Air Force One, his invitations to Camp David, and his wife’s friendship with Laura Bush.

But the job of EPA administrator has become much less pleasant since the Democrats won control of Congress and began zeroing in on EPA’s actions and on Johnson’s relationship with the White House. That scrutiny is almost certain to intensify as the Bush administration attempts to deepen its imprint on environmental policy before leaving office in January. In the coming months, EPA is expected to issue some of the most controversial regulations of the Bush era—on global warming, pollution from “factory” farms, emissions from coal-fired power plants, and industrial emissions of lead.

Johnson denies that he is a White House puppet. “Each of these decisions is my decision, my decision alone,” he told *National Journal* in a March 28 interview. “One of the things that I’ve learned in my 27 years at EPA and being in a variety of decision-making capacities is that it’s not a popularity contest.... I completely reject the fact that I don’t listen to my staff,” he said. “I spend hours upon hours with them, going through various options and understanding the implications.”

Johnson’s approach to his job is defended by Jeff Holmstead, who headed EPA’s air-pollution and radiation program during Bush’s first term. “Different administrators have very different views of their role,” said Holmstead, a partner at Bracewell & Giuliani. “There are some EPA administrators who really go out of their way to represent the environmental community. And there are other EPA administrators who go out of their way to really be part of the administration.” From that perspective, Johnson is the consummate team player.

### Never Popular

Industry lobbyists say they are tired of hearing that the Bush EPA always sides with the business community. “You’re not talking to a person who says, ‘Wow, we got a break from the agency,’” said William Kovacs, vice president of the U.S. Chamber of Commerce’s environment, technology, and regulatory affairs division.

In the case of ozone, for example, Kovacs noted that a broad coalition of industry groups waged an aggressive—but ultimately unsuccessful—campaign to persuade the Bush administration not to toughen air-pollution regulations. The chamber, the American Petroleum Institute, the American Farm Bureau Federation, and other business organizations argued that any new restriction would hurt the economies of hundreds of communities already struggling to meet federal air-pollution demands.

Kovacs insists that Bush has the right to intervene in controversial environmental debates and overrule EPA’s scientific pan-

els and staff members. “The last time I checked, the executive branch was run by the president of the United States,” Kovacs said. “And it is up to him to execute the laws, not some scientist who is sitting in a windowless office and has one opinion and who wasn’t elected.”

Business lobbyists and environmental advocates agree that the administration has adopted several groundbreaking programs to protect the environment. Under Bush, regulators have reduced sulfur dioxide pollution from diesel-powered trucks; curbed emissions from ships, trains, and construction equipment; and imposed record fines on some of the nation’s biggest polluters.

Holmstead notes that EPA is never particularly popular with business. “When I was in the EPA air office, it was hard to find a U.S. industry that we didn’t regulate,” he said. “What EPA does is impose very expensive regulations on the business community. Therefore, EPA is viewed with a little more skepticism perhaps than some of the other agencies.” Every White House keeps a close eye on the agency for fear that its regulators will ignore the economic costs of environmental protection, Holmstead said, adding, “EPA may not be well suited to understand the overall picture, so there needs to be a counterbalance within the administration.”

Bush’s supporters contend that congressional Democrats’ attacks on EPA are inherently political. Boxer shoots back, “To say that Democrats’ criticism of the Bush EPA is just politics is ludicrous on its face, because we all breathe the same air and drink the same water and rely on the EPA to protect us from the ravages of ozone, lead, perchlorate, and other toxins.”

Likewise, Rep. John Dingell, D-Mich., chairman of the House Energy and Commerce Committee, says that Bush’s EPA “has consistently failed to meet the needs of the American people.” Famous for his searing investigations of government agencies regardless of which party is in the White House, Dingell brags, “I’m an equal-opportunity son of a bitch.”

### The Turnabout

Washington insiders say that the Bush White House has significantly altered the way the federal government approaches environmental protection by quietly changing the way EPA does its job. For one thing, critics charge, Bush is trying to starve the agency of cash. The White House’s proposed fiscal 2009 budget would provide just \$7.1 billion—fewer actual dollars than EPA has received in any fiscal year since 1997. Bush’s plan, when adjusted for inflation, includes record-low funding levels for community drinking water facilities and for the Superfund hazardous-waste cleanup program. Lawmakers from both political parties say they’ll scrap the budget proposal and start from scratch.

Meanwhile, EPA lawyers and scientists say that on some key issues Johnson has directed agency staffers to come up with legal and scientific justifications for regulatory decisions that the White House has already made. That’s quite a turnabout from the agency’s traditional practice: EPA’s professional staff would craft a proposed regulation in response to a new law or to public health problems, and the White House and the Office of Management and Budget would then vet the agency’s draft rule.

And it’s not just regulations that the White House is said to be

### ■ Pork Politics



**This year, EPA is expected to issue some of its most controversial Bush-era regulations, including one on pollution from “factory” farms.**

GETTY IMAGES/DANIEL PEPPER

taking the lead on. In December, Johnson announced he would block California from developing its own program to regulate greenhouse-gas emissions from cars and trucks. Agency documents gathered by the House Oversight and Government Reform Committee show that EPA staffers overwhelmingly recommended that Johnson approve California’s request. Agency insiders say that the decision to deny the state a waiver originated in the White House and that Johnson subsequently ordered EPA lawyers and scientists to provide a rationale for the rejection. Congressional investigators are checking internal EPA documents to confirm that sequence of events.

Johnson “appears to have ignored the evidence before the agency and the requirements of the Clean Air Act,” says Oversight Committee Chairman Henry Waxman, D-Calif. Johnson maintains that EPA scientists and lawyers gave him a wide range of options for responding to California’s request and that he made the final decision.

Current and former EPA officials also contend that the White House is telling agency staff members to focus on how much proposed regulations would cost industry, even when federal law specifically directs EPA to focus only on public health. “They’ve tried to achieve a paradigm shift in how EPA makes decisions,” said Carol Browner, who was EPA administrator during the Clinton administration and is now with the Albright Group. “They want to shift the agency away from the historical focus on public health and environmental protection and toward requiring cost-benefit analyses.”

That change, she said, could be hard for the next president to reverse. “The question is: How much have they loaded that into the under-workings of the agency, and how do you tease it back out to guarantee that the agency does its job?” said Browner, who advises Democratic presidential candidate Hillary Rodham Clinton.

House Democrats say that EPA is letting industry call the shots on appointments to its advisory panels. In May 2007, chemical-industry officials protested the appointment of Deborah Rice, a Maine government toxicologist, to an EPA panel charged with

reviewing a potentially harmful chemical. Industry officials said that Rice was biased because she had testified about the health hazards associated with the chemical. After receiving a letter of protest from the American Chemistry Council, the lobbying group for the nation's largest chemical manufacturers, Johnson dismissed Rice from the panel. Dingell later noted in a letter to EPA that Johnson took no action against nine scientific experts on the advisory panel who had financial ties to the American Chemistry Council or to chemical companies.

Under Johnson, EPA has been accused of limiting public access to reams of federal information on pollutants, industries, and agency research—documents that are supposed to be available under the Freedom of Information Act. EPA has also eased requirements that companies provide data to the public about the volume of hazardous chemicals they release into the air and water in a given community.

The most devastating blow to public access came in 2006 when EPA summarily shuttered several of its libraries around the nation without first developing a plan for how vital data could be obtained by its staff and the public. According to a Government Accountability Office report, some librarians at EPA's Washington headquarters and in regional offices tossed out documents and sold office equipment at fire-sale prices in their rush to meet prescribed deadlines for closing down. EPA said that the shutdowns would save money and that much of the material would be posted online. However, the GAO noted, because of copyright restrictions, only 10 percent of EPA's data can be digitized for Internet access. In late March, EPA responded to the GAO report by promising to reopen the libraries in some fashion.

Jeff Ruch, executive director of Public Employees for Environmental Responsibility, an alliance of state and federal employees who work on environmental issues, summed up the EPA staff's frustration over the library closures: "It took a real special talent to make library management controversial."

### Creative Writing

The Bush administration also stands accused of taking an inappropriately creative and business-oriented approach to interpreting environmental laws. But, increasingly, that creativity is being slapped down by federal judges, who are ordering EPA to adhere to the letter of the law.

One of the most dramatic examples involves mercury emissions by coal-fired power plants. Under the Clean Air Act, EPA must order utilities to install cutting-edge technology to control such emissions. However, before Johnson became administrator, other Bush appointees scrapped that part of the law and instead created a cap-and-trade program allowing companies to buy and sell mercury pollution credits.

In February, the U.S. Court of Appeals for the District of Columbia Circuit ridiculed the EPA's interpretation of the law, saying it "deploys the logic of the Queen of Hearts" in Lewis Carroll's *Alice's Adventures in Wonderland*. EPA and a utility-industry group are appealing.

While that legal battle drags on, the utility industry continues to emit 50 tons of mercury each year. EPA's critics contend that its controversial reinterpretation of the Clean Air Act was an underhanded way to indefinitely postpone federal controls on mercury emissions. "If the industry believes that delay is victory, they got it," former EPA Administrator Browner said. Mercury can cause severe neurological damage and is especially dangerous to young children and the fetuses of pregnant women who eat contaminated fish.

Opponents also accuse the White House of blocking federal regulation of greenhouse-gas emissions. During the 2000 presidential campaign, candidate Bush pledged to control carbon dioxide and other pollutants that cause climate change. But once in office, the president reversed his position, arguing that global warming was just a theory and that such restrictions would hurt the U.S. economy. Since then, the White House has argued that EPA does not have the legal authority to regulate greenhouse-gas emissions.

However, in April 2007, the Supreme Court ruled that the Clean Air Act requires EPA to regulate greenhouse gases emitted by cars and trucks if agency scientists determine that the pollutants are a danger to the public. Responding to the decision, EPA took seven months trying to pull together a regulatory program. It spent \$5.3 million on contractor services and dedicated 53 EPA employees to the project, which concluded that the gases are dangerous. The agency then drafted a 300-page proposal to regulate those emissions. In early December, the documents were sent to the White House and to other federal agencies for review.

But last month, Johnson announced that EPA was starting over.

## ■ Cutting Through the Haze

### Today's clash between the Bush administration and congressional Democrats over the regulation of ozone is reminiscent of the 1997 battle

between the Clinton administration and the Republicans who then controlled Congress. Back then, congressional Republicans unsuccessfully tried to pressure President Clinton into killing an EPA proposal to tighten restrictions on ozone, which is caused when motor-vehicle exhaust and industrial chemicals mix on sunny days.

Ozone, which is a greenhouse gas, can cause asthma, chest pain, and emphysema.

During the 1997 debate, the Republican-led House Commerce Committee—now known as Energy and Commerce—held a series of hearings critical of the agency's position on ozone. The committee's campaign against EPA was orchestrated in part by the panel's general counsel, Charles Ingebretson, and its air-pollution counsel, Robert Meyers.

Fast-forward to today's ozone de-

bate. In early March, EPA Administrator Stephen Johnson adopted an ozone standard that is widely considered weaker than that recommended by his agency's independent panel of scientific advisers. Hill Democrats have responded by accusing EPA of not doing enough to protect public health.

Who assisted Johnson in reaching his ozone decision? His chief of staff is Charles Ingebretson. And EPA's air and radiation office is led by Robert Meyers. —M.K.

He said that using the Clean Air Act to regulate greenhouse gases from cars and trucks would have forced regulators to curb global-warming emissions from power plants, factories, and other businesses. Instead, he said, EPA would examine whether it could use a recently passed energy bill to address the vehicular emissions.

The reversal infuriated congressional Democrats, state officials, and environmentalists because the nation's highest court had specifically ruled on EPA's duties under the Clean Air Act. Johnson's about-face virtually guarantees that the federal government will not regulate greenhouse gases during Bush's presidency. "The Bush administration is recklessly abandoning its responsibility to address the global-warming crisis," Waxman said. Early this month, a coalition of states, cities, and environmental groups petitioned a federal court to force EPA to regulate climate-change pollutants under the Clean Air Act.

The agency's legal defeats on mercury and global warming are not isolated cases. During the past four years, the Bush administration has lost 10 lawsuits on air-pollution issues alone in the D.C. Circuit Court, which handles most challenges involving federal regulations. Holmstead, who authored the mercury rule while at EPA, insists the administration has been the victim of a liberal court. "It does seem that the court has been more willing to stretch the law if [EPA] does something that is viewed as pro-environmental versus when the environmentalists oppose it," he said.

But Lazarus, the Georgetown law professor, said that both Republican and Democratic appointees have ruled against the environmental policies of the Bush White House and EPA. "They've lost a lot of their major reforms in court, and they've lost them with balanced panels," he pointed out.

Former EPA lawyer Eric Schaeffer agreed. "These guys are losing these lawsuits on the plain language of the statute," said Schaeffer, who spent 12 years at EPA and headed the agency's regulatory enforcement office during the Clinton administration and early in the current administration. "The court is saying, 'You haven't read the law.' That's how you get conservative judges to side with the environment. You draw a circle around the statute and say, 'This was written by Congress.'" Schaeffer now runs the Environmental Integrity Project, an advocacy group.

In the absence of federal regulations on mercury, global warming, and other pollution problems, the states are increasingly developing their own curbs, noted Becker of the air regulators group: "By not taking strong action in a lot of these areas, the agency is inviting the states to act. And, by golly, they have."

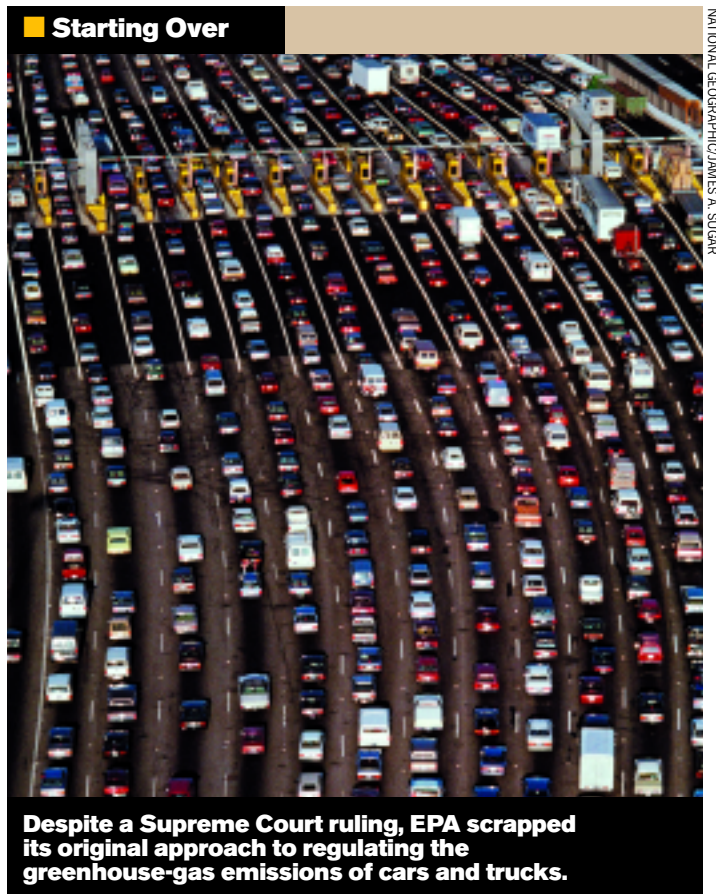
Now, industry officials have begun complaining that the states are creating a patchwork of regulatory programs and that a uniform federal standard would be easier to meet.

### Closing Time

As Bush's presidency winds down, EPA is drawing up a long list of new environmental policies. "As the president said, he's sprinting to the finish line. And I, too, am sprinting to the finish line," Johnson said.

His critics are bracing for the worst. "The administration is going to be pushing out some very obnoxious stuff," predicts John Walke, director of the Natural Resources Defense Council's clean-air program. "They've got their agenda all lined up. And they want to accomplish as much as they can before they leave office."

Some of the administration's environmental proposals—the president's EPA budget, for example—can be ignored by Congress. Others will no doubt be challenged in court. But quite a



few actions will be difficult to reverse—even under a new, more environmentally friendly administration. "Realistically, it would take half of an administration to overturn the damage they've done through rule-making," Walke said. "And that's if you start immediately and succeed at overturning everything that was harmful from the past eight years. That's probably not likely. It's daunting at best."

As Becker sees it, "Under any new administration, including a McCain administration, they need to come in from the get-go and turn the page. They need to move on. People at EPA will feel relieved." Browner said she would counsel the next EPA administrator to take a firm stand on key environmental issues. She recalled the advice she received from the agency's first head: "Ruckelshaus told me, 'If you're not prepared on occasion to use your position and power to go directly to the president and ask him to support a decision you're making, you shouldn't take the job.'"

In the meantime, disgruntled EPA professionals are longing for the day when the next administration takes over their agency. "It's not a Republican-versus-Democrat issue," said union representative Hirzy. "It's just that in the last eight years we've had a reactionary operation here that has just been murderous. 01/20/09—that's the magic number." ■

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# The President's Man

EPA's controversial administrator stands up to critics who **accuse him of caving in to the White House** on a host of environmental issues.

**A**dministrator Stephen Johnson has become a familiar face on Capitol Hill because of his controversial stewardship of the Environmental Protection Agency. Life in the spotlight is something new for Johnson, 57, who spent most of his 27 years at EPA as a midlevel bureaucrat. Insiders describe the administrator as a congenial, go-along-to-get-along kind of person who enjoys the perks of his office. The following are excerpts from his March 28 interview with *National Journal*.

**■ NJ: You recently scrapped a staff proposal to regulate car and truck emissions under the Clean Air Act as directed in the Supreme Court's global-warming decision. Why start over?**

■ Johnson: Here's what happened. As the agency was preparing its regulations, Congress passed the Energy Independence and Security Act, raising the fuel-efficiency standards for cars and trucks. People tend to forget that the primary way to control carbon dioxide emissions from automobiles is through fuel economy. There isn't a catalytic converter that you just put in and capture the greenhouse-gas emissions.

Also, at the same time, it became very apparent to me that a decision spotlighting just cars and trucks would have had significant implications under the Clean Air Act [requiring EPA to regulate] stationary sources, whether they are factories or coal-fired power plants or hospitals or schools. And so I took an approach to look at the implications of the Clean Air Act across all the sources.

**■ NJ: You recently issued an ozone pollution limit that's weaker than the one unanimously recommended by EPA's independent Clean Air Scientific Advisory Committee. Why?**

■ Johnson: The law requires that I make a decision and set a [primary] standard that is requisite to protect public health with an adequate margin of safety. CASAC chose a [pollution cap] within the range of 60 to 70 [parts per billion of ozone]. After CASAC met, we did additional evaluation. I concluded that there was additional uncertainty [about the scientific

data]. So I went to a 75 ppb level to make sure there was an adequate margin of safety.

**■ NJ: Did the White House force you to change the ozone standard?**

■ Johnson: Well, the health protective standard was my decision, and my decision alone. The only issue [that the White House changed] was the form of the secondary standard [to protect "public welfare," including animals, vegetation, and crops]. It was a policy judgment, not an issue of protectiveness of the environment. The form of the standard, that policy decision, went all the way to the president. And certainly I agree with that policy direction.

**■ NJ: Critics allege that EPA staff members opposed your decision denying California's request for a waiver to develop its own program for controlling greenhouse-gas emissions. True?**

■ Johnson: What was presented to me was a range of options, all of which were legally defensible. And that range included denial of the petition. Under the Clean Air Act there are three criteria for denying a waiver. One of them is whether there are compelling and extraordinary conditions for California that make [it] unique. But California is not unique [in how it will be affected by climate change]. This is a global problem.

**■ NJ: You've been accused of ignoring EPA experts and caving in to White House orders on environmental issues.**

■ Johnson: That is the furthest thing from the truth. Each of these decisions is my decision, my decision alone. One of the things that I've learned in my 27 years at EPA and being in a variety of decision-making capacities is that it's not a popularity contest. I need to understand what the law directs me to do, and understand what the science also directs me to do, and then, ultimately, what is the appropriate public policy, given those. These are not easy decisions. I completely reject the fact that I don't listen to my staff.

**■ NJ: Congress is concerned that you're spending \$280,000 for a two-week trip to Australia.**

■ Johnson: It's all part of the continuing collaboration between Australia and the United States. I, as administrator, have taken a very limited number of international trips. It's an important trip, and we're very open and transparent about our activities. This [congressional criticism] is much ado about nothing and certainly might be viewed by some as an unnecessary outburst of concern when we ought to be doing orderly business with our international partners to help improve the environment.

—M.K.

■ Stephen Johnson



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**"These are not easy decisions. I completely reject the fact that I don't listen to my staff," the agency head says.**